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COUNTY OF SANTA CLARA and SANTA
CLARA COUNTY PUBLIC HEALTH
DEPARTMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CALIFORNIA RESTAURANT
ASSOCIATION,

Plaintiff,

v.

THE COUNTY OF SANTA CLARA
and THE SANTA CLARA COUNTY
PUBLIC HEALTH DEPARTMENT,

Defendants.

No. C 08-03685 JF

**DECLARATION OF TAMARA LANGE IN
SUPPORT OF OPPOSITION TO
ADMINISTRATIVE MOTION FOR
EXPEDITED BRIEFING**

Complaint filed: July 22, 2008

Notice of Removal filed: August 1, 2008

The Honorable Jeremy Fogel

I, TAMARA LANGE, do declare that:

I have personal knowledge of all of the matters stated herein and could testify truthfully thereto if called to testify.

1. I am a Lead Deputy County Counsel with the Office of the County Counsel for the County of Santa Clara and am licensed to practice in all the courts of the State of California.

2. On August 4, 2008, I spoke with Sarah Esmaili of Arnold & Porter LLP, counsel for Plaintiff California Restaurant Association (CRA). I asked whether CRA would stipulate to a proposed order relating the cases. Ms. Esmaili asked in that conversation whether the County of Santa Clara would agree to delay the September 1, 2008 effective date of Santa Clara County

1 Ordinance No. NS-300.793 (the Ordinance). I explained that only the Board of Supervisors
2 (Board) can delay the effective date of duly-enacted local laws, including the Ordinance, and
3 that the Board was not scheduled to meet again until August 11- 12, 2008.

4 3. In a further conversation on August 5, 2008, Ms. Esmaili informed me that CRA
5 would be unable to stipulate to relation of the two cases because doing so would create a 10-day
6 period for decision on the motion to relate, which could in turn delay CRA's ability to obtain a
7 Court order setting an expedited briefing schedule on their motion for a preliminary injunction.
8 Ms. Esmaili reiterated that CRA would require that Defendants agree to a delay in the effective
9 date as a condition of its agreement to provide San Francisco with additional time to oppose the
10 motion for preliminary injunction.

11 4. In that same conversation on August 5, 2008, I explained to Ms. Esmaili that, given
12 the voluminous material submitted in support of their motion and the very recent filing of the
13 litigation, to prepare effectively to file opposition papers, I would need substantially more time
14 than the three days CRA proposed in their briefing schedule. I further explained that Public
15 Health Director Martin Fenstersheib, M.D. is out of the office until August 11, 2008 and will
16 not be available to provide the substantive factual and medical information essential to his
17 expert declaration in support of Defendants' opposition to CRA's motion for a preliminary
18 injunction.

19 5. Attached hereto as Exhibit A is the Santa Clara County Board of Supervisors Closed
20 Session Agenda for August 11, 2008.

21 6. Attached hereto as Exhibit B is the Stipulation and Order Regarding Page Limits
22 And Briefing Schedule Regarding Plaintiff's Motion for Declaratory Relief and a Preliminary
23 Injunction, and a Stay of Enforcement filed in Case No. C-08-3247 CW.

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1 7. Attached hereto as Exhibit C is Plaintiff's Statement of Non-Opposition to
2 Defendants' Administrative Motion to Consider Whether Cases Should Be Related, filed in
3 Case No. C-08-3247 CW.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed at San Jose, California on August 8, 2008.

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7 
8 TAMARA LANGE

9 138726.wpd

BOARD OF SUPERVISORS CLOSED SESSION AGENDA

**County Government Center
10th Floor Conference Room
70 West Hedding Street
Monday, August 11, 2008**

2:00 p.m.

The Board will meet in open and public session to identify the real property Negotiators for Item No. 3 and its Designated Representatives for Item Nos. 5, 6 and 7.

1. Personnel (Government Code Section 54957):

It is the intention of the Board to meet in Closed Session to consider:

Employee Evaluations

Chief of Correction
Clerk of the Board
County Counsel
County Executive
Director, Child Support Services
Public Defender

2. Pending Litigation (Government Code Section 54956.9(a)):

It is the intention of the Board to meet in Closed Session to confer with Legal Counsel regarding three items of existing litigation.

- A. Melanie and John Godby v. County of Santa Clara
Santa Clara County Superior Court Case No. 1-07-CV-096603
- B. California Restaurant Association v. County of Santa Clara, et al.
U.S. District Court, Northern District of California, Case No. C08-03685 RS
- C. County of Santa Clara, et al. v. Atlantic Richfield Company, et al.
California Supreme Court Case No. S163681

3. Real Property Negotiations (Government Code Section 54956.8):

It is the intention of the Board to meet in Closed Session to confer with its Real Property Negotiators concerning:

The price and terms of payment for the possible sale of real property located at 2500 Senter Road, San Jose (APN 497-41-098). The negotiator for the County is Patrick Love, Asset and Economic Development Director. The negotiator for Charities Housing is Chris Block, Executive Director.

EXHIBIT A

**Closed Session Agenda
August 11, 2008
Page 2**

4. Threat to Public Services or Facilities (Government Code Section 54957):
It is the intention of the Board to meet in Closed Session regarding the security of public buildings, essential public services, or the public's right of access to public services or public facilities.
5. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives:

Designated Representative's Name: Luke Leung

Local 20, IFPTE, Engineers and Scientists (ESC)
Local 21, IFPTE, Engineers and Architects (E&A)
Local 521, SEIU
Local 1587, AFSCME, Probation Peace Officers Union
Administrative Confidential Employees (ACE)
Building Trades Council (BTC)
Committee of Interns and Residents (CIR/SEIU)
Correctional Peace Officers Association (CPOA)
County Counsel Attorneys Association (CCAA)
County Employees Management Association (CEMA)
Deputy Sheriffs' Association (DSA)
District Attorneys Investigators Association (DAIA)
Government Attorneys Association (GAA)
Park Rangers Association
Registered Nurses Professional Association (RNPA)
Union of American Physicians and Dentists (UAPD)
Unrepresented Executive Management

For the following item, the Board will meet as the Governing Board of the In Home Supportive Services (IHSS) Public Authority.

6. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives concerning the following:

Designated Representative's Name: Luke Leung
Local 521, SEIU

For the following item, the Board will meet as the Board of Directors for the Santa Clara County Central Fire Protection District.

7. Conference with Labor Negotiators (Government Code Section 54957.6):
It is the intention of the Board to meet in Closed Session to confer with its Designated Representatives concerning the following:

Designated Representative's Name: Luke Leung
Local 1165, International Association of Fire Fighters (IAFF)

Trenton H. Norris (California State Bar No. 164781)
Sarah Esmaili (California State Bar No. 206053)
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Peter L. Zimroth (*pro hac vice* admission pending)
Kent A. Yalowitz (*pro hac vice* admission pending)
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Attorneys for Plaintiff
CALIFORNIA RESTAURANT ASSOCIATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C-08-3247 CW

Case No. _____

CALIFORNIA RESTAURANT
ASSOCIATION,

Plaintiff,

v.

THE CITY AND COUNTY OF SAN
FRANCISCO and THE SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH,

Defendants.

STIPULATION AND ORDER
REGARDING PAGE LIMITS AND
BRIEFING SCHEDULE REGARDING
PLAINTIFF'S MOTION FOR
DECLARATORY RELIEF AND A
PRELIMINARY INJUNCTION, AND
REGARDING STAY OF
ENFORCEMENT

(Civil Local Rule 7.11)

EXHIBIT B

STIPULATION

WHEREAS, Plaintiff California Restaurant Association filed a Complaint against the City and County of San Francisco and the San Francisco Department of Public Health (collectively, "Defendants") alleging that Ordinance 40-08 ("Ordinance") violates the U.S. and California Constitutions;

WHEREAS, the Ordinance amends San Francisco Health Code sections 468-468.8 to require restaurants with twenty or more establishments in the State of California to make statements showing certain nutritional information on menu boards and menus in manner prescribed by the Ordinance;

WHEREAS, Plaintiff alleges that the Ordinance is preempted under federal and state law and that the Ordinance unconstitutionally compels speech by the restaurants subject to the Ordinance;

WHEREAS, Plaintiff has brought a Motion for Declaratory Relief and a Preliminary Injunction ("Motion") in this action to enjoin the San Francisco Department of Public Health from enforcing the Ordinance;

WHEREAS, certain nutritional disclosure requirements begin to take effect under the Ordinance on August 23, 2008 ("Disclosure Requirements");

WHEREAS, a proposed amendment to the Ordinance is pending that would, among other things, postpone the operative date of these Disclosure Requirements to September 20, 2008;

WHEREAS, in light of the proposed amendment to the Ordinance, Defendant San Francisco Department of Public Health has stated that it will not enforce these Disclosure Requirements until September 20, 2008;

WHEREAS, the Parties have agreed that, subject to Court approval of this Stipulation, Plaintiff's Motion would be noticed at least 63 days before the hearing date, Defendants' opposition papers would be due no less than 35 days before the hearing date, and Plaintiff's reply to the opposition papers would be due no less than 14 days before the hearing date;

1 WHEREAS, Defendants have agreed to postpone the operative date of the Disclosure
2 Requirements until October 14, 2008;

3 WHEREAS, Civil Local Rule 7-2(b) provides for a twenty-five (25) page limit on any
4 motion and supporting memorandum of points and authorities filed in this action;

5 WHEREAS, Civil Local Rule 7-3(c) provides for a twenty-five (25) page limit on any
6 opposition to any motion filed in this action;

7 WHEREAS, given the complexity of the constitutional issues raised in the action and in the
8 Motion, Plaintiff and Defendants believe that it is appropriate, subject to Court approval, for the
9 Motion and supporting memorandum of points and authorities and the Opposition to the Motion to
10 exceed the twenty-five (25) page limit such that they are each no more than thirty-five (35) pages in
11 length; and

12 WHEREAS, Plaintiff and Defendants agree that this stipulation is without prejudice as to
13 any party's right to seek further or additional relief as to matters addressed herein;

14 IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff and Defendants,
15 subject to approval of the Court, that:

16 1. Plaintiff's Motion (including the supporting memorandum of points and authorities)
17 may exceed the twenty-five (25) page limit imposed by Civil Local Rule 7-2(b), but may not exceed
18 a total of thirty-five (35) pages, exclusive of the caption page, table of contents, table of authorities,
19 declarations, and exhibits.

20 2. Defendants' opposition to the Motion may exceed the twenty-five (25) page limit
21 imposed by Civil Local Rule 7-3(c), but may not exceed a total of thirty-five (35) pages, exclusive
22 of the caption page, table of contents, table of authorities, declarations, and exhibits.

23 3. Plaintiff's Motion shall be noticed for hearing on a date that is no less than 63 days
24 after the Motion is filed and served.

25 4. Defendants' opposition to the Motion shall be filed and served not less than 35 days
26 before the hearing date.

5. Plaintiff's reply to Defendants' Opposition to the Motion shall be filed and served not less than 14 days before the hearing date.

6. The operative date of the Ordinance shall be stayed until October 14, 2008 without prejudice as to Plaintiff's right to seek a further stay and Defendants' right to oppose any further stay.

SO STIPULATED:

Dated: July __, 2008

ARNOLD & PORTER LLP

By:

Trenton H. Norris

Attorneys for Plaintiff

CALIFORNIA RESTAURANT ASSOCIATION

Dated: July __, 2008

DENNIS J. HERRERA

City Attorney

FRANCESCA GESSNER

Deputy City Attorney

By:

Francesca Gessner

Tara Steeley

Attorneys for Defendants

CITY AND COUNTY OF SAN FRANCISCO

AND SAN FRANCISCO DEPARTMENT OF

PUBLIC HEALTH

PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

7/23/08

Dated: _____



UNITED STATES DISTRICT COURT JUDGE

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Attorneys for Plaintiff
 CALIFORNIA RESTAURANT ASSOCIATION

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CALIFORNIA RESTAURANT
 ASSOCIATION,

 Plaintiff,

 v.

 THE CITY AND COUNTY OF SAN
 FRANCISCO and THE SAN FRANCISCO
 OF DEPARTMENT OF PUBLIC HEALTH,

 Defendants.

Case No. 08-CV-03247 CW

**PLAINTIFF CALIFORNIA
 RESTAURANT ASSOCIATION'S
 STATEMENT OF NON-OPPOSITION
 TO DEFENDANTS' ADMINISTRATIVE
 MOTION TO CONSIDER WHETHER
 CASES SHOULD BE RELATED**

The Honorable Claudia Wilken

CALIFORNIA RESTAURANT
 ASSOCIATION,

 Plaintiff,

 v.

 THE COUNTY OF SANTA CLARA and
 THE SANTA CLARA COUNTY PUBLIC
 HEALTH DEPARTMENT,

 Defendants.

Case No. 08-CV-03685 RS

*Reassignment to a United States
 District Court Judge pending*

EXHIBIT C

1 Plaintiff California Restaurant Association respectfully submits this statement of non-
2 opposition in response to Defendants County of Santa Clara and the Santa Clara County Public
3 Health Department's Motion To Consider Whether Cases Should Be Related. Although Plaintiff
4 does not believe the cases are related, it does not oppose reassignment, and writes to inform the
5 Court of its need for an expedited hearing date and briefing schedule in *California Restaurant*
6 *Association v. The County of Santa Clara, et al.*, Case No. 08-CV-03685 RS (the "*Santa Clara*
7 *County case*") on its Motion for Declaratory Relief and a Preliminary Injunction ("Preliminary
8 Injunction Motion") for the reasons stated below.

9 The Complaint against Defendants that is currently pending in the *Santa Clara County case*
10 arises out of an action that Plaintiff filed in the Santa Clara County Superior Court ("Superior
11 Court"). On July 22, 2008, Plaintiff filed the Superior Court action seeking declaratory and
12 injunctive relief to prevent enforcement of a newly promulgated ordinance, Santa Clara County
13 Ordinance No. NS-300.793 (the "Ordinance"), which requires certain chain restaurants to display
14 select parts of nutrition information (calories and in some cases transfat, carbohydrates and sodium)
15 in a precisely described manner on restaurant menus. The Ordinance was passed on June 24, 2008,
16 and goes into effect on September 1, 2008. On July 23, 2008, Plaintiff appeared in the Superior
17 Court, along with counsel for Defendants. Plaintiff obtained on that date a hearing date of August
18 15, 2008 from the Clerk of the Complex Litigation Division of that Court. Based on this August 15,
19 2008 hearing date, Defendants were required to file their opposition papers to the Preliminary
20 Injunction Motion by August 4, 2008, and Plaintiff was required to file its reply papers by August 8,
21 2008. However, on August 1 – the last business day before their opposition brief was due –
22 Defendants removed the action from the Superior Court. The removed case was assigned to
23 Magistrate Judge Richard Seeborg in the Northern District of California, San Jose Division.
24 Defendants have not filed an opposition to the Preliminary Injunction Motion before or since
25 removal.

26 Defendants have refused to stay the September 1, 2008 effective date of the Ordinance.
27 Consequently, on August 6, 2008, Plaintiff filed an Administrative Motion before Magistrate Judge
28

1 Seeborg, seeking an expedited hearing and briefing schedule so that its Preliminary Injunction
2 Motion could be heard and decided before the September 1 effective date of the Ordinance. A copy
3 of that Administrative Motion and the Proposed Order Granting that Administrative Motion are
4 attached as Exhibits 1 and 2, respectively. However, on August 7, 2008, Defendants filed a
5 Declination To Proceed before a Magistrate Judge and Request for Reassignment to a United States
6 District Judge. To Plaintiff's knowledge, the *Santa Clara County* case has not yet been reassigned
7 to a United States District Court Judge.

8 On August 6, 2008, Defendants filed their administrative motion seeking to relate the *Santa*
9 *Clara County* case, Case No. 08-CV-03685, to *California Restaurant Association v. The City and*
10 *County of San Francisco, et al.*, Case No. 08-CV-3247 CW. Local Civil Rule 3-12 provides:

11 An action is related to another when:

12 (1) The actions concern substantially the same parties, property,
13 transaction or event; and

14 (2) It appears likely that there will be an unduly burdensome
15 duplication of labor and expense or conflicting results if the cases are
conducted before different Judges.

16 Although the cases involve different defendants and different ordinances, Plaintiff agrees that there
17 are judicial economies in having the cases consolidated before a single judge and therefore do not
18 oppose reassignment under Paragraph E.4 of General Order No. 44. However, Plaintiff writes to
19 bring to this Court's attention its need for an expedited hearing and briefing schedule in the *Santa*
20 *Clara County* case (Case No. 08-CV-03685) in light of the September 1 effective date of the Santa
21 Clara Ordinance, and the *Santa Clara County* defendants' unwillingness to agree to a stay.

22 Given Defendants' (1) removal of this case on the eve of the due date of their opposition to
23 the Preliminary Injunction Motion, (2) refusal to agree to a stay of the hearing date and briefing
24 schedule proposed by Plaintiff in its Administrative Motion, and (3) declination of consent to have
25 the case heard before Magistrate Judge Seeborg, Defendants have placed this case in a posture
26 where Plaintiff is unable to have its Preliminary Injunction Motion scheduled for briefing and a
27 hearing on the expedited schedule it requires. In their Declination To Proceed Before a Magistrate
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1 Judge, Defendants state that Plaintiff's Motion for Declaratory Relief and a Preliminary Injunction
2 in *California Restaurant Association v. City and County of San Francisco* (Case No. 08-CV-03247
3 CW) is set for a hearing on September 4, 2008. That date was agreed upon by the parties in that
4 case because the City and County of San Francisco agreed to stay the effective date of its ordinance
5 until October 14, 2008. A September 4 hearing date for the Preliminary Injunction Motion in the
6 *Santa Clara County* case would mean that the motion would not be heard – let alone decided –until
7 after the Ordinance went into effect and the Plaintiffs' members were denied their constitutional
8 rights. Such a schedule not only would infringe on constitutional rights of the most serious nature,
9 it would also deny Plaintiff and its members their right of meaningful access to the Courts, after
10 Plaintiff has made every effort to obtain a prompt hearing date and expedited briefing schedule.

11 CONCLUSION

12 For the reasons stated herein, Plaintiff does not oppose Defendants' administrative motion.
13 If the *Santa Clara County* case is related to Case No. 08-CV-03247 CW, Plaintiff believes it is
14 appropriate for the Court to order an expedited briefing and hearing schedule on the Preliminary
15 Injunction Motion that is consistent with what Plaintiff has requested in the *Santa Clara County*
16 case.

17
18 Dated: August 7, 2008

ARNOLD & PORTER LLP

19
20 By: /s/
Trenton H. Norris
Attorneys for Plaintiff
CALIFORNIA RESTAURANT
ASSOCIATION
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